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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,421	01/16/2001	Robert Jones	J00-1129	9163

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EXAMINER

PIASCIK, SUSAN L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 07/16/2002

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/761,421

Applicant(s)

JONES, ROBERT

Examiner

Susan L Piascik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/20/02.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3000

fmf

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Response to Arguments

Applicant's arguments filed May 20, 2002 have been fully considered but they are not persuasive.

The applicant argues that the Pierpont reference is not valid in suggesting, teaching or implying the claimed reference. The examiner disagrees and wishes to maintain the rejections based on this reference.

The Pierpont reference discloses a rolled lip that acts in the same manner as the lip disclosed by the applicant. The examiner understands that the lip is "rolled," however, it performs the same function of supporting the tray when the tray is inverted. The applicant has added the provision that the lip is in substantially parallel relation to the bottom plate. The examiner finds the lip disclosed by Pierpont to also be in parallel relation to the bottom plate and also forming a first resting surface of the tray. The applicant never claims the lip to be flat. Further, unless the applicant wishes the lip to be at an angle where the first resting surface is found, the examiner finds the applicant's device to be supported in exactly the same manner as the Pierpont reference. This support is merely a straight line of contact between the lip and the flat surface.

The applicant also argues that the Pierpont reference does not teach a side wall. The examiner argues that the rolled edge/lip does create a side wall that is perpendicular to the bottom plate. The length of the rolled edge does give the device depth. The examiner also disagrees with the statement made by the applicant arguing that the deeper cavity allows more

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insects to be trapped. The sooner the insect's back comes in contact with the adhesive the more likely the insect will be trapped. If the insect has time to feel around with antennas, there is the possibility of escape.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the McMullen reference was used to merely show the application of bait to the device to lure the insects into the trap. This is not a novel idea.

In lieu of the above arguments, the examiner wished to maintain the previous rejections. The Pierpont reference teaches a device that has nearly the same structure and is used for the exact purposes of the applicant's claimed invention. Therefore, the examiner feels that one of ordinary skill in the art would have found the disclosed invention obvious with respect to the prior art.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pierpoint in view of McMullen.

In regards to **claim 1**, Pierpoint teaches a trap for pests comprising a tray (1) having a bottom plate (2). The plate (2) has an inner surface (unnumbered), an outer surface (unnumbered) and a sidewall (unnumbered) extending perpendicularly to the bottom plate (2). A contiguous lip (8) is integrally connected to the sidewall (17) and extends along the periphery thereof. A portion of the lip (8) forms a first resting surface. An outwardly extending protuberance (18) is secured to the lip (8) forming a second resting surface (18) of the tray (1) opposite the first resting surface (8). A layer of adhesive (3) is deposited on the inner surface of the bottom plate (2). Pierpoint fails to teach the placement of bait on the adhesive strip. However, McMullen discloses the use of bait (20) (col 3, lines 29-32) in a similar insect trap (10). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the trap disclosed by Pierpoint to include bait, as taught by McMullen, in order to lure more pests towards the adhesive trap.

Regarding **claim 2**, Pierpoint, as modified, discloses a pest trap wherein the protuberance (18) elevates a portion of the lip (8) adjacent to the protuberance (18) above a mounting surface (unnumbered) where the tray (1) is positioned with the outer surface facing upwardly.

In regards to **claim 3**, Pierpoint, as modified, discloses a pest trap wherein the second resting surface (18) elevates a portion of the tray (1) adjacent to the protuberance (18) above a mounting surface (unnumbered) such that the bottom plate (2) is downwardly inclined towards the first resting surface.

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Regarding **claim 4**, Pierpoint, as modified, discloses a pest trap wherein a gradually reducing opening is defined between a mounting surface (unnumbered) where the tray (1) is positioned and the bottom plate (2) to allow pests to crawl under the bottom plate (2) into the trap. See Figure 2.

Regarding **claim 5**, Pierpoint as modified by McMullen in claim 1, teaches a pest trap wherein the bait (20) is made from material attractive to pests. See McMullen, col 6, lines 25-35.

In regards to **claim 6**, Pierpoint teaches a trap for pests, comprising a tray (1) having a bottom plate (2). The plate (2) defines an inner surface (unnumbered), an outer surface (unnumbered) and a sidewall (17) unitary connected and extending perpendicularly to the bottom plate (2). A contiguous lip (8) extends along the periphery of the sidewall. A portion of the lip (8) forms a first resting surface of the tray (1). A narrow protuberance (18) extends perpendicularly and outwardly from the lip (8) forming a second resting surface (18) of the trap when the trap is placed with the outer surface of the bottom plate (2) facing upwardly. A layer of adhesive (3) is deposited on the inner surface of the bottom plate. The tray (1) defines a gradually decreasing opening to allow pests to crawl under the bottom plate (2) into the trap. Pierpoint fails to teach the placement of bait on the adhesive layer. However, McMullen discloses the use of pest-attracting bait (20) (col 3, lines 29-32) in a similar insect trap (10). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the trap disclosed by Pierpoint to include bait, as taught by McMullen, in order to lure more pests towards the adhesive trap.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pierpoint in view of McMullen. In regards to this claim, Pierpoint teaches a method of trapping insects by

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providing a shallow tray (1) having a bottom plate (2), a continuous sidewall, a contiguous lip (8) extending along the periphery of the sidewall and a narrow protuberance (18) extending outwardly from the lip (8). Next, an adhesive (3) substance is deposited on the inner surface of the bottom plate (2). The trap is placed on a mounting surface with an outer surface of the bottom plate (2) facing upwardly, while resting the trap on a portion of the lip (8) and on the protuberance (18), thereby defining a gradually decreasing window under the lip (4) to allow insects to crawl through the opening and become entrapped in the adhesive substance deposited in the tray. Pierpoint fails to teach the depositing of a bait substance on the layer of adhesive. However, McMullen discloses the use of bait (20) (col 3, lines 29-32) in a similar insect trap (10). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the method disclosed by Pierpoint to include the depositing of a bait substance on the adhesive material, as taught by McMullen, in order to lure more pests towards the trap.

In regards to **claim 8**, Pierpoint, as modified, discloses a method wherein a portion of the lip (8) defines a first resting surface and the protuberance (18) defines a second resting surface.

Regarding **claim 9**, Pierpoint, as modified, discloses a method wherein the protuberance (18) is located opposite the first resting surface, such that the outer surface of the bottom plate (2) defined an inclines surface, with the highest point being located adjacent to the protuberance (18). See Figure 2.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

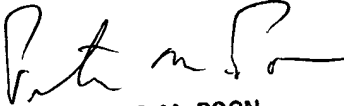
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan L Piascik whose telephone number is (703)305-0299. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703)308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-7687 for regular communications and (703)305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-7687.

slp
July 15, 2002


PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3800